



THE ATTORNEY GENERAL OF TEXAS

Gerald C. Mann
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ATTORNEY GENERAL

AUSTIN 11, TEXAS

This Opinion
Overrules Opinion No.
O-5324

Honorable Tom F. Coleman, Jr.
County Attorney, Angelina County
Lufkin, Texas

Dear Sir:

Opinion No. O-5502
Re: Use of bond moneys for
construction of nurses'
home, delivery room and
maternity ward.

This is in response to recent correspondence we have had with you and Honorable Otto Brittain, County Auditor of Angelina County, requesting our reconsideration of Opinion No. O-5324. In that opinion we held that funds from bonds voted in 1941 by Angelina County for the purpose of establishing, enlarging and equipping a county hospital could not be used to construct a nurses' home. Based upon the additional facts submitted, we are treating the matter as a new opinion request.

As we understand the facts now presented, in the year 1941 Angelina County voted a bond issue for the purpose of "establishing, enlarging and equipping a county hospital and for all other necessary permanent improvements in connection therewith." This bond issue was authorized under the provisions of Article 4478, V. A. C. S. You desire to be advised whether these funds may be used to construct a building in connection with the hospital, which will be used partly to house nurses and partly for delivery rooms and a maternity ward. You state that the entire building probably will be used to house nurses when a main hospital building is constructed after the war.

In our opinion it lies within the power of the commissioners' court to construct the proposed building.

We cannot say that a building used wholly as a nurses' home or partly as a nurses' home and partly as a delivery room and maternity ward is not used for hospital purposes; and while it is true, as pointed out in our Opinion No. O-5324, the law requires that the building be "necessary," the question of necessity is one of fact; Pitts v. Camp County, 42 S.W. (2d) 853 left for determination to the governing authority of the county. Landrum

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v. Centennial High School District (Civ. App.) 146 S.W. (2d) 799, w.d.j.
c. Compare Opinion Nos. O-1607, O-2516 and O-2926. Moreover, we have found at least one case holding that the word "necessity" as here used implies "needful" rather than "indispensible." Hutcheson v. Atherton, 44 N. M. 144, 99 Pac. (2d) 462.

We therefore advise you that if the Commissioners' Court of Angelina County determines, in the exercise of its sound judgment and discretion, that the proposed building is necessary, proceeds from the bonds voted by Angelina County in 1941 may be used to construct it.

Insofar as the same conflicts herewith, our Opinion No. O-5324 is expressly overruled.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

s/ Jas. D. Smullen
Jas. D. Smullen
Assistant

APPROVED AUG 18, 1943

s/ Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

JDS:EP:egw

Approved Opinion Committee
By RWF Chairman